

# **EXHIBIT D**

**Fischer, Howard**

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**From:** Fischer, Howard  
**Sent:** Tuesday, April 17, 2018 5:10 PM  
**To:** 'Anthony DeMint'  
**Cc:** Ellenbogen, Bennett  
**Subject:** RE: Discovery

Anthony,

It would have been preferable to find out that your responses would be two weeks late before the due date, and without us having to follow up with you. In any event, while we would normally have no qualms about granting such an extension, we are concerned that the tight discovery schedule imposed by Judge Schofield complicates such requests. Of course, should the Court grant your pending motion this concern might be mooted. Perhaps we should raise the issue with the Court next Wednesday, after she has read her opinion.

Should the Court deny your motion and keep the case, we would have no objection to your request, as long as it is coupled to an appropriate extension of the discovery deadlines, and the Court approves of that arrangement. Hopefully that will assuage all of our concerns.

Regards,

Howard

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**From:** Anthony DeMint [<mailto:anthony@demintlawn.com>]  
**Sent:** Tuesday, April 17, 2018 1:46 PM  
**To:** Fischer, Howard  
**Cc:** Ellenbogen, Bennett  
**Subject:** RE: Discovery

Howard,

My sincerest apologies, I have been working through the documents. Would it possible to get a short extension to next Wednesday for our first set of documents?

Please advise.

Best,

**ANTHONY N. DEMINT**  
Attorney at Law  
DeMint Law, PLLC  
3753 Howard Hughes Parkway  
Second Floor, Suite 314  
Las Vegas, NV 89169  
(T) 702.714.0889  
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**EXHIBIT A**

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**From:** Fischer, Howard [<mailto:FischerH@SEC.GOV>]  
**Sent:** Tuesday, April 17, 2018 10:43 AM  
**To:** Anthony DeMint ([anthony@demintlaw.com](mailto:anthony@demintlaw.com))  
**Cc:** Ellenbogen, Bennett  
**Subject:** Discovery

Anthony:

We served our initial set of discovery requests on your clients on March 13, 2018. Responses were due on April 12, 2018; as of today, we have not received anything. It is possible that they are being processed internally, but as we did not get any email response from you as well, we thought that we would reach out to determine whether they been sent out. Can you advise as to the status of your response?

Regards,

Howard

Howard Fischer  
Senior Trial Counsel  
Securities & Exchange Commission  
Brookfield Place, 200 Vesey Street  
Room 17-216  
New York, NY 10281.  
Tel: (212) 336-0589  
Cell: (917) 226-1943  
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SECURITIES AND EXCHANGE COMMISSION  
NEW YORK REGIONAL OFFICE  
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400  
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT DIAL LINE  
(212) 336-0589

April 18, 2018

**Filed Via ECF**

United States District Judge Lorna G. Schofield  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**Re: SEC v. Premier Holding Corp., et al., 17 Civ. 9485 (LGS)**

We represent the Plaintiff in this action, the Securities and Exchange Commission ("SEC"), and write with respect to various open discovery matters in this matter. Although the SEC has made every effort to expedite the disclosure process, the lack of timely responses by other parties and non-parties have complicated those efforts. Should the Court decide to keep this case, we would like to raise these issues at the Wednesday, April 25, 2018 conference before Your Honor to explore how to best address them.

In the first place, although initial disclosures under Fed.R.Civ.Proc. 26(a)(1) were due on March 14, 2018, the SEC only received disclosures from defendants Randall Letcavage ("Letcavage") and Premier Holding Corporation ("Premier") a month later, on April 13, 2018. This was after Letcavage and Premier moved to dismiss on *forum non conveniens* grounds, or for transfer, and after the SEC submitted its opposition to that motion. The provision of these disclosures so late – and coincidentally a day before the Reply brief in that motion – potentially prejudices the SEC's opposition to that motion. Moreover, the SEC has not received any disclosures from defendant Joseph Greenblatt.

Nor has the SEC received responses to its discovery requests to Letcavage or Premier, which were due on April 12, 2018. When the undersigned reached out to counsel for those parties, he advised that he was "working through the documents" and would like an extension of approximately two weeks.<sup>1</sup> While we would like to extend parties every courtesy, we are concerned that this extension, along with the other matters referenced in this letter, prejudices the SEC's prosecution of this matter.

Non-party discovery has also been hampered by a variety of factors. One individual non-party advised the SEC that he recently suffered a death in the family, and asked for more time to respond on that basis. Anton & Chia, LLP ("A&C"), Premier's auditors, has recently replaced its

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<sup>1</sup> A copy of that email correspondence, and the SEC's response thereto, is attached as Exhibit A to this letter.

United States District Judge Lorna G. Schofield

April 18, 2018

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long-time counsel<sup>2</sup> and, in response to the SEC's document requests, has not produced any documents, objecting on a variety of grounds, which the SEC believes are frivolous. Based on subsequent communication with the SEC, A&C primarily appears to be objecting on the ground that they simply do not know what they have and what they might have already produced during the investigation. The SEC is working with A&C's replacement counsel to resolve this issue, and might have to move to compel if those efforts prove unavailing. This discovery is likely to be central to the SEC's case, especially if, as expected, defendants assert any defenses based on advice of their auditors.<sup>3</sup>

Finally, the Court's decision to adjourn the time to answer until after resolution of the pending motion means that the SEC is conducting discovery without full knowledge of what possible defenses might be asserted. While the SEC believes that it is likely that Letcavage and Premier will assert reliance on their auditors as a defense, until the SEC knows whether that, or other affirmative defenses, are being asserted, planning discovery – especially knowing the scope of non-party discovery or determining who to depose – is complicated.

Should the Court deny Letcavage's and Premier's pending motion, the SEC would like an opportunity to raise these issues.

Respectfully Submitted,



Howard Fischer

cc: Anthony Nero DeMint, Esq. (via ECF and email)  
(Counsel for Defendants Premier Holding Corp., and Randall Letcavage)

Joseph Greenblatt (via email)  
(*Pro Se* Defendant)

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<sup>2</sup> Anton & Chia is also being sued by the SEC for auditing failures related to a number of issuers.

<sup>3</sup> Emails setting out the complexities of the discovery sought from A&C is attached hereto as Exhibit B.

**From:** Fischer, Howard  
**To:** Anthony DeMint (anthony@demintl.com)  
**Cc:** Ellenbogen, Bennett  
**Subject:** Overdue discovery  
**Date:** Wednesday, August 08, 2018 4:13:00 PM

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Anthony:

On March 13, 2018, the SEC served discovery requests on both Premier and on Mr. Letcavage. Responses thereto were due on April 12, 2018. You advised us at the depositions in our office on July 18 and 19, 2018, that you were in the process of gathering and organizing responsive documents. We have not received anything.

These documents are well overdue. Moreover, we have not had a written response to our discovery either, nor do we have a date by which we can expect one.

Given these failures, we regretfully will be compelled to file a motion to compel unless you can provide us a date certain within the next five business days on which responses, including responsive documents, will be served.

Howard

Howard Fischer  
Senior Trial Counsel  
Securities & Exchange Commission  
Brookfield Place, 200 Vesey Street  
Room 17-216  
New York, NY 10281.  
Tel: (212) 336-0589  
Cell: (917) 226-1943  
Fax: (703) 813-9490  
FischerH@SEC.gov

**From:** [Anthony DeMint](#)  
**To:** [Fischer, Howard](#)  
**Cc:** [Ellenbogen, Bennett](#)  
**Subject:** RE: Overdue discovery  
**Date:** Thursday, August 09, 2018 1:20:49 PM

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Howard,

I will have a set of discovery responses out to you tomorrow. We plan to supplement as we identify and gather additional documents, if any, that are responsive to your requests.

I appreciate your patience and professionalism.

Best,

**Anthony N. DeMint**

Attorney at Law

DeMint Law, PLLC

3753 Howard Hughes Parkway

Second Floor, Suite 314

Las Vegas, NV 89169

(T) 702.714.0889

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**From:** Anthony DeMint  
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**Subject:** RE: Discovery  
**Date:** Tuesday, April 17, 2018 1:45:53 PM

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**ANTHONY N. DeMINT**  
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